



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 688

## IN THE MATTER OF MICHAEL FREDRICKSON

### DISPOSITION AGREEMENT

The State Ethics Commission and Michael Fredrickson enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On September 5, 2002, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Fredrickson. The Commission has concluded its inquiry and, on April 14, 2003, found reasonable cause to believe that Fredrickson violated G.L. c. 268A.

The Commission and Fredrickson now agree to the following findings of fact and conclusions of law.

### Findings of Fact

1. Fredrickson is the Board of Bar Overseers ("the BBO") general counsel. In the Commission's view, the BBO is a state agency within the meaning of G.L. c. 268A.<sup>1</sup>
2. During the time relevant, Fredrickson supervised a staff comprising several attorneys and three administrative assistants. Fredrickson and his administrative assistants did not socialize outside of the office.
3. Fredrickson's appointing authority is the twelve-member BBO, which oversees all attorneys registered to practice law in the state. During the time relevant, the board members, being volunteers, were only occasionally on site at the BBO office.
4. In the mid-1990s, Fredrickson began writing a mystery novel called *A Cinderella Affidavit*. That novel was published in May 1999.
5. In 1997, Fredrickson began writing a second novel, *Witness for the Dead*. It was published in May 2001.

6. Fredrickson spent substantial time during his regular BBO office hours writing and preparing his novels for publication. This included time spent almost daily in his office, working on his office computer, and up to five hours per week immediately after each novel was published.

7. In the course of writing and preparing his novels for publication, Fredrickson requested his administrative assistants to perform novel-related tasks for him. The assistants spent substantial time during their regular BBO office hours performing the following tasks: making photocopies, addressing correspondence, faxing documents, making telephone calls, and mailing items. They also instructed Fredrickson in the use of the office equipment, such as his computer, the printer and the postage meter. These tasks were performed by the assistants sporadically throughout the years in question.

8. Fredrickson knew that his administrative assistants were performing novel-related work for him during their office hours.

9. Because Fredrickson was their supervisor, the administrative assistants felt that they were required to perform the novel-related work for him. When the work dominated a significant amount of their office time, the assistants became uncomfortable with the situation, but they did not say anything to Fredrickson about it.

10. According to Fredrickson, the time that he spent working on his novels at the office was offset by the time that he spent working on BBO matters at home. During the time relevant, however, Fredrickson never discussed with his appointing authority, the twelve-member BBO, his use of his BBO office and computer, his own BBO time, or his subordinate staff to write and publish his novel, and the board was completely unaware of the situation. Moreover, Fredrickson kept no records to document the asserted offset.<sup>2</sup>

## **Conclusions of Law**

11. As the BBO general counsel, Fredrickson is, in the Commission's view, a state employee within the meaning of G.L. c. 268A.

12. Section 23(b)(2) prohibits a state employee from knowingly or with reason to know using his position to obtain for himself or others unwarranted privileges of substantial value and not properly available to similarly situated individuals.

13. By using his BBO office, his BBO equipment and his BBO time to write and prepare his novels for publication, and by requesting his BBO subordinates to use their office hours to assist him with his novel-related tasks, Fredrickson knowingly used his position as BBO general counsel to secure unwarranted privileges of substantial value.

14. Fredrickson's use of his BBO office, equipment and time to work on his novels constituted an unwarranted privilege because a state employee is paid to

perform state business using state resources during state office hours, and is not entitled to use those resources and hours for personal business.

15. In addition, Fredrickson's use of his subordinates' time constituted an unwarranted privilege because Fredrickson's subordinates' time was supposed to be spent on BBO business, Fredrickson initiated the use as noted above, and his subordinates' decisions to help their supervisor were not entirely voluntary. In fact, such decisions will rarely be voluntary because they will be influenced, and were so influenced in this case, by the inherently exploitable nature of the relationship between a supervisor and his subordinates.

16. Fredrickson's use of his BBO office, equipment and time, and his solicitation and use of his subordinates' help to facilitate his personal activities, was not properly available to similarly situated individuals because § 23(b)(2) prohibits state, county and municipal employees from using their government time and resources to further their private businesses.

17. Finally, the value of the time, help and state resources that Fredrickson obtained was worth well over \$50 and, therefore, of substantial value.

18. Thus, Fredrickson knowingly used his official position as the BBO general counsel to secure for himself unwarranted privileges of substantial value. By doing so, Fredrickson violated G.L. c. 268A, § 23(b)(2).<sup>3</sup>

## **Resolution**

In view of the foregoing violations of G.L. c. 268A by Fredrickson, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Fredrickson:

- (1) that Fredrickson pay to the Commission the sum of \$5,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(2);
- (2) that Fredrickson pay to the BBO the sum of \$5,000 in the nature of a civil forfeiture reflecting the time that he and his subordinates spent performing novel-related tasks during their BBO hours, and the value of the BBO equipment used; and
- (3) that Fredrickson waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: October 9, 2003

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<sup>1</sup> Pursuant to G.L. c. 268A, § 1(p), a state agency is defined as any department of a state government, including the judicial branch, and including “any division, board, bureau, commission, institution, tribunal or other instrumentality within such department.” The Supreme Judicial Court created the BBO in 1974 as an administrative body under the SJC’s supervision.

<sup>2</sup> Fredrickson appears to have kept records of and reimbursed the BBO for his use of BBO paper, postage and telephone calls in connection with his novels.

<sup>3</sup> Section 6 of the conflict-of-interest law prohibits a state employee from participating as such in a particular matter in which he has a financial interest. Fredrickson’s participation in determinations regarding how he and his subordinates should use their BBO time, and regarding his use of BBO resources for his novel-related purposes, raises § 6 issues. The Commission, however, declined to pursue this conduct under § 6 because of the specific circumstances involved.